

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHILEWICH SULTAN LLC

Plaintiff,

-against-

SAMBONET PADERNO INDUSTRIE S.P.A.
and SAMBONET USA, INC.,

Defendants.

08 CV 00359 (AKH)

ECF Case

ANSWER

Defendants Sambonet Paderno Industrie SpA and Sambonet USA, Inc., as and for their answer to the complaint of plaintiff Chilewich Sultan LLC dated January 15, 2008 (the "Complaint"), allege as follows:

1. Deny the allegations contained in paragraph 1 of the Complaint.

The Parties

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint.

3. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. Deny the allegations contained in paragraph 4 of the Complaint, except admit that Sambonet Paderno Industrie SpA is an Italian business entity with a place of business located at S.R. 11 – KM 34 – 28060, Orfento (NO) Italy.

5. Deny the allegations contained in paragraph 5 of the Complaint, except admit that Sambonet Paderno Industrie SpA is involved in the manufacture, purchase, distribution, and sale of table top products.

6. Denies the allegations contained in paragraph 6 of the Complaint, except admit that Sambonet Paderno Industrie SpA products are distributed in various countries, including France, Portugal, Switzerland, and Italy.

7. Admits the allegations contained in paragraph 7 of the Complaint.

8. Denies the allegations contained in paragraph 8 of the Complaint, except admit that Sambonet USA, Inc. is owned by Sambonet Paderno Industrie SpA and imports products of Sambonet Paderno Industrie SpA for distribution in the United States.

9. Denies the allegations contained in paragraph 9 of the Complaint, except admit that Rosenthal USA Ltd. distributes products in the United States on behalf of Sambonet USA, Inc., and has a showroom located at 41 Madison Avenue, New York, New York.

10. Deny the allegations contained in paragraph 10 of the Complaint.

Facts Common to All Counts

11. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 11 of the Complaint.

12. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 14 of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 of the Complaint.

Chilewich's Engineered Squares and Engineered Rectangles Designs

16. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16 of the Complaint.

17. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 17 of the Complaint.

18. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 18 of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 19 of the Complaint.

20. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 20 of the Complaint.

21. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 21 of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 22 of the Complaint.

23. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 23 of the Complaint.

Defendants' Infringing Activities

24. Deny the allegations contained in paragraph 24 of the Complaint.

25. Deny the allegations contained in paragraph 25 of the Complaint.

26. Deny the allegations contained in paragraph 26 of the Complaint.

27. Deny the allegations contained in paragraph 27 of the Complaint.

28. Deny the allegations contained in paragraph 28 of the Complaint.

- 29. Deny the allegations contained in paragraph 29 of the Complaint.
- 30. Deny the allegations contained in paragraph 30 of the Complaint.
- 31. Deny the allegations contained in paragraph 31 of the Complaint.
- 32. Deny the allegations contained in paragraph 32 of the Complaint.
- 33. Deny the allegations contained in paragraph 33 of the Complaint.

COUNT I

[Copyright Infringement]

34. Defendants repeat and reallege the allegations contained in paragraphs 1 to 33 hereof as if set forth fully herein.

- 35. Deny the allegations contained in paragraph 35 of the Complaint.
- 36. Deny the allegations contained in paragraph 36 of the Complaint.
- 37. Deny the allegations contained in paragraph 37 of the Complaint, except refers to the document designated as Exhibit 6 of plaintiff's complaint for the contents thereof.
- 38. Deny the allegations contained in paragraph 38 of the Complaint.
- 39. Deny the allegations contained in paragraph 39 of the Complaint.
- 40. Deny the allegations contained in paragraph 40 of the Complaint.

COUNT II

[Copyright Infringement]

41. Defendants repeat and reallege the allegations contained in paragraphs 1 to 40 hereof as if set forth fully herein.

- 42. Deny the allegations contained in paragraph 42 of the Complaint.
- 43. Deny the allegations contained in paragraph 43 of the Complaint.

44. Deny the allegations contained in paragraph 44 of the Complaint, except refers to the document designated as Exhibit 6 of plaintiff's complaint for the contents thereof.

45. Deny the allegations contained in paragraph 45 of the Complaint.

46. Deny the allegations contained in paragraph 46 of the Complaint.

47. Deny the allegations contained in paragraph 47 of the Complaint.

COUNT III

[Violation of Italian Unfair Competition Law]

48. Defendants repeat and reallege the allegations contained in paragraphs 1 to 47 hereof as if set forth fully herein.

49. Deny the allegations contained in paragraph 49 of the Complaint.

50. Deny the allegations contained in paragraph 50 of the Complaint.

51. Deny the allegations contained in paragraph 51 of the Complaint.

52. Deny the allegations contained in paragraph 52 of the Complaint.

COUNT IV

[Infringement of Foreign Copyright Rights]

53. Defendants repeat and reallege the allegations contained in paragraphs 1 to 52 hereof as if set forth fully herein.

54. Deny the allegations contained in paragraph 54 of the Complaint.

55. Deny the allegations contained in paragraph 55 of the Complaint.

56. Deny the allegations contained in paragraph 56 of the Complaint.

57. Deny the allegations contained in paragraph 57 of the Complaint.

58. Deny the allegations contained in paragraph 58 of the Complaint.

COUNT V

[Foreign Unfair Competition]

59. Defendants repeat and reallege the allegations contained in paragraphs 1 to 58 hereof as if set forth fully herein.

60. Deny the allegations contained in paragraph 60 of the Complaint.

61. Deny the allegations contained in paragraph 61 of the Complaint.

62. Deny the allegations contained in paragraph 62 of the Complaint.

63. Deny the allegations contained in paragraph 63 of the Complaint.

64. Deny the allegations contained in paragraph 64 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

65. Plaintiff has failed to state a valid claim for compensatory damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

66. Plaintiff has failed to state a valid claim for injunctive or other equitable relief.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

67. Plaintiff has failed to state a valid claim for attorneys' fees.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

68. Plaintiff has failed to state a valid claim for disgorgement of profits.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

69. Plaintiff has failed to state a valid claim under Italian unfair competition law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

70. Plaintiff has failed to state a valid claim under any foreign copyright law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

71. Plaintiff has failed to state a valid claim under any foreign unfair competition law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

72. Plaintiff has failed to state a valid claim for infringement of any rights with respect to its alleged "ENGINEERED RECTANGLES" design.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

73. The designs for which plaintiff alleges it holds copyrights are staple and commonplace, and, therefore, are not copyrightable.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

74. Plaintiff's copyright registrations are not valid because the subject designs are not original to plaintiff.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

75. The allegedly infringing products of defendants are not substantially similar to the portions of the subject designs that are original to plaintiff, if any.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

76. Any infringement of plaintiff's copyrights on the part of defendants, which defendants deny, took place before defendants received actual or constructive notice of the alleged copyright protection.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

77. Any infringement of plaintiffs' copyrights on the part of defendants, which defendants deny, was innocent.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

78. Any infringement of plaintiffs' copyrights on the part of defendants, which defendants deny, was not willful.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

79. Defendants did not manufacture any of the allegedly infringing products.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

80. Defendants purchased the allegedly infringing products from a third party in good faith and in reasonable reliance on the third party's representations that it had all necessary rights thereto.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

81. Defendants are not selling, distributing, advertising, promoting, importing, and/or displaying the allegedly infringing products.

AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE

82. Defendants have not received any profits deriving from the allegedly infringing products.

AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE

83. This Court lacks subject matter jurisdiction over plaintiff's claims alleged under the copyright laws of the United States, because all of the allegedly unlawful events and conduct complained of took place entirely outside of the United States.

AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE

84. This Court lacks personal jurisdiction over defendant Sambonet Paderno Industrie SpA.

AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE

85. Plaintiff's action should be dismissed on *forum non conveniens* grounds because, *inter alia*, the events and acts complained of occurred wholly or substantially in Italy, material witnesses are residents of and present in Italy, plaintiff asserts claims under Italian law, and the Courts of Italy provide an adequate and appropriate forum for plaintiff's purported claims.

AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE

86. Defendant Sambonet USA, Inc. did not engage in any of the allegedly unlawful conduct or events complained of, and, therefore, bears no liability therefor.

AS AND FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE

87. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver and/or estoppel.

AS AND FOR A TWENTY-FOURTH AFFIRMATIVE DEFENSE

88. Plaintiff's claims are barred, in whole or in part, by the doctrines of unclean hands and/or laches.

AS AND FOR A TWENTY-FIFTH AFFIRMATIVE DEFENSE

89. If plaintiff suffered any damages, which defendants deny, plaintiff failed to mitigate them.

WHEREFORE, defendants Sambonet Paderno Industrie SpA and Sambonet USA, Inc. respectfully demand judgment as follows:

- (a) Dismissing the Complaint in its entirety;
- (b) Awarding defendants their costs and reasonable attorneys' fees incurred in connection with this action; and
- (c) Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
March 14, 2008

BARTON BARTON & PLOTKIN LLP

By: 
Randall L. Rasey (RR 2972)

*Attorneys for Defendants Sambonet Paderno
Industrie SpA and Sambonet USA, Inc.*
420 Lexington Avenue
New York, NY 10170
rrasey@bartonesq.com
Tel.: (212) 687-6262
Fax: (212) 687-3667